Support for the Amendments

The amendment to Table 1 correctly specifies the optional covalent linking group as represented by a "B" as given in the original table. A fresh table had been invited and provided for clarity but a "T" was inadvertently provided in the structure whereas the application clearly recites elsewhere that a "B" is used. No new matter is presented.

The dependent claims are amended to properly reflect the claim type of independent claim 34.

REMARKS

35 USC §112 Rejection of Claims 37-42

Claims 37-42 were rejected for improper "catalyst system" subject matter and have been amended to remove this rejection.

Nonstatutory Double Patenting Rejection

The cited patents and this application are commonly owned by ExxonMobil Chemical Patents Inc. (nee Exxon Chemical Patents Inc.).

Claim 34 was rejected over claims 1-12 of commonly owned U.S. Patent No. 5,227,440 and claims 37-42 were rejected over commonly owned U.S. Patent No. 5,057,475. Applicants respectfully traverse the rejection because the two-way obviousness test should be applied wherein if either test fails, the application claims should be allowed over this rejection; and because the claims of the patents are patentably distinct from the claims of the present application. Furthermore, the continued prosecution of the application beyond the issuance of the patents was not due to Applicant's delay but rather due to the administrative delay in the USPTO, associated with interference proceedings of 1992-2004.

A two-way test is to be applied only when the applicant could not have filed the claims in a single application *and* there is administrative delay. See *In re Berg*, 46 USPQ2d 1226 (Fed. Cir. 1998) and MPEP 804 II B. (b).

Background and Argument

Applicants were justified in defending the interference claims of this application which resulted in the prosecution extending well beyond the issuance of the commonly owned patents. The patents were originally filed more than three months after the filing

of the continuation-in-part base case of this application; this application is a divisional of that CIP and was quickly filed after receipt of the restriction requirement, albeit later than the base applications for the patents (5,227,440 is a divisional of 5,057, 475):

Time Line

09/13/89 Original application 07/406,945;

06/04/90 CIP 07/533,245 of Original application 406,945;

09/13/90 CIP 07/581,869 of 533,245– **US 5,057,475**

03/28/91 Divisional 07/676,690 of CIP 533,245 – **this application.**

08/28/91 Divisional 07/751,392 of CIP 581,869 – **US 5,227,440.**

The present application has already been terminally disclaimed to as early as 2009 over U.S. Patent No. 5,026,798.

Since the two-way obviousness test must be applied, it must also be shown that the claims of the cited, commonly owned patents are not patentably distinct over claims 34 and 37-42 of this application. They are patentably distinct. They are a further development wherein the catalyst is supported on an inert support (all claims require an inert support).

The successful support of these mono cyclopentadienyl catalysts was not easily accomplished until Applicant discovered a method thereafter permitting use of the catalyst in gas phase polymerization processes and certain slurry processes, reducing metal residue in the final product. Variables included choice of support, particle size,

surface area, inert atmosphere, contact method, recovery method, etc. for a given mono Cp catalyst used with alumoxane. All of these are evidence of unobviousness of the patent claims over the application claims. The lack of support disclosure in the earlier applications is also evidence of their unavailability and, therefore, unobviousness.

Since patent claims to application claims obviousness is not established, withdrawal of the double patenting rejection is respectfully requested.

Respectfully submitted,

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Date

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